IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE ACTING CHIEF JUSTICE MR.K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 9TH FEBRUARY 2007 / 20TH MAGHA 1928

WA.No. 151 of 2007()

AGAINST THE JUDGEMENT IN WPC.1379/2006 Dated 15/03/2006
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APPELLANT/RESPONDENT

THE SPECIAL TAHSILDAR (LA) & LAND
ACQUISITION OFFICER, OFFICE OF THE LAND
ACQUISITION SPECIAL OFFICER, THODUPUZHA.

BY GOVERNMENT PLEADER MR.T.B.HOOD

RESPONDENT/PETITIONER

HARIKUMAR K.C, S/O.CHANDRASEKHARAN NAIR,
KOODATHINAL VEEDU, KOLANI P.O,THODUPUZHA VILLAGE,
IDUKKI DIST.REP.BY THE POWER OF ATTORNEY HOLDER,
SRI.CHANDASEKHARAN NAIR.

BY ADV.MR.R.LAKSHMI NARAYANAN &
SMT.R.RANJINI

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 09/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S.RADHAKRISHNAN, Ag.C.J. &
M.N.KRISHNAN, J.

W.A.No.151 of 2007

Dated, this the 9th day of February, 2007

JUDGMENT

Krishnan, J.

This is an appeal preferred against the judgment in W.P.(C) No.1379 of 2006. The short question that arises for determination in the appeal is whether the right of the writ petitioner to file reference application under Section 18 of the Land Acquisition Act, 1894 is barred by limitation in view of the specific provisions contained under Section 18 of the said Act. The contention of the writ petitioner is to the effect that he was working at Coimbatore and he had not been served with notice and he preferred the application for reference in proper time immediately on obtaining the information regarding the passing of the award. The following facts are not disputed. The award was passed in June, 2005 and the mother of the writ petitioner received personal notice on 24.6.2005 and the notice to the writ petitioner could not be served on him directly as he was not available and, therefore, it was served on his father on the said

date. The writ petitioner contended that it was not proper service of notice and, therefore, he is entitled to prefer the reference application within six months from the date of passing of the award by the Land Acquisition Officer.

2. Under Section 12(2) of the Land Acquisition Act the Collector has to give notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made. Under Section 18(2) sub clause (b), the reference application has to be preferred within six weeks of the receipt of the notice from the Collector under Section 12(2) or within a period of six months from the date of the Collector's award, whichever period shall first expire. Manner of service of notice is dealt with under Section 45 of the Land Acquisition Act. Section 45(2) would show that whenever it is practicable, the service of the notice shall be made on the person therein named. Under Section 45(3) when such person cannot be found, it can be served on any adult male member of his family residing with him. In this case it is evident from the records available that personal service of notice could not be effected for want of availability of the person. So, according to

the Government, it was served on his father. It is contended by the writ petitioner that he was away in Coimbatore for a period of six months and he was not residing with his father at that point of time and, therefore, the service of notice on the father is not valid for the reason that it was not served on an adult male member of the family residing with him. We have also been taken through the endorsement that is made in the award notice, which would only show that the father had signed for Harikumar. The writ petitioner has got a contention that the serving officer only intimated the father to inform about such a notice and, therefore, it is not proper service of notice on the person as contemplated by law. There are no materials available to show that the writ petitioner was only temporarily out of station for a period of one or two days and there is also nothing to show that the father was authorised to receive notice on behalf of him and that at that time the writ petitioner was residing with his father. So the mandate contained under Section 45 of the Land Acquisition Act has not been complied with. When it is so, certainly the writ petitioner is entitled to prefer an application for reference within a period of six months from the date of the

award of the Collector. It is not disputed that the present reference application is made within a period of six months, which is the statutory compliance. Therefore, we do not find any mistake committed by the learned Single Judge in allowing the prayer of the writ petitioner.

The writ appeal lacks merit and it is dismissed.

Sd/-
K.S.RADHAKRISHNAN,
Ag.CHIEF JUSTICE.

Sd/-
M.N.KRISHNAN,
JUDGE.

vns

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